

December 12, 2014

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Craig Pearson, Superintendent of Waste Disposal  
Johnathan Seifert, Resource Recovery Supervisor  
Chris Schneider, City Engineer  
City of Santa Cruz  
809 Center Street, Suite 201  
Santa Cruz, CA 95060

Craig Pearson, Superintendent of Waste Disposal  
Johnathan Seifert, Resource Recovery Supervisor  
Chris Schneider, City Engineer  
City of Santa Cruz  
605 Dimeo Lane  
Santa Cruz, CA 95060

**Re: Notice of Violations and Intent to File Suit**  
**Under the Federal Water Pollution Control Act**

Dear Mr. Pearson, Mr. Seifert and Mr. Schneider:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the City of Santa Cruz's ("Santa Cruz") landfill facility located at 605 Dimeo Lane, Santa Cruz, California, 95060 ("the Facility"). The WDID number for the Facility is 3 44I003057. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Lombardi Creek and the Monterey Bay. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, Craig Pearson, Johnathan Seifert, Chris Schneider, and the City of Santa Cruz shall hereinafter be collectively referred to as "Santa Cruz."

This letter addresses Santa Cruz's unlawful discharges of pollutants from the Facility to Lombardi Creek, which flows into Monterey Bay. Santa Cruz is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit"). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Craig Pearson, Johnathan Seifert, Chris Schneider, and the City of Santa Cruz are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Craig Pearson, Johnathan Seifert, Chris Schneider, and the City of Santa Cruz under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

### **A. The Clean Water Act.**

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). "Navigable waters" means "the waters of the United States" and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters



adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA is informed and believes, and thereupon alleges, that Santa Cruz has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the General Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least April 1, 1992. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Santa Cruz is subject to penalties for violations of the Act since December 12, 2009.

#### **B. Santa Cruz's Facility, Water Quality Standards, and EPA Benchmarks**

The Facility is located at 605 Dimeo Lane in the city of Santa Cruz and discharges directly to Lombardi Creek and the Monterey Bay. The Facility falls under Standard Industrial Classification ("SIC") Code 4953 ("Hazardous Waste Treatment Storage or Disposal"). Accordingly Santa Cruz must analyze storm water samples for Total Suspended Solids (TSS), pH, Specific Conductance (SC), and Total Organic Carbon (TOC) or Oil and Grease (O&G), in addition to Ammonia (NH<sub>3</sub>), Magnesium (Mg), Chemical Oxygen Demand (COD), Arsenic (As), Cadmium (Cd), Cyanide (CN), Lead (Pb), Mercury (Hg), Selenium (Se), and Silver (Ag). *See* General Permit, Section B(5)(c)(i) - (iii) and at Table D, Sections M and N.

Santa Cruz submitted a Notice of Intent ("NOI") to discharge under the General Permit in 1992. CSPA's investigations into the industrial activities at Santa Cruz's approximately 100-acre Facility indicate that the Facility is used to process and store waste paper, plastic, metals, and glass; waste oil; scrap metals including aluminum and steel; waste oils and greases; treated wood wastes; agricultural waste; and electronic waste including scrap household electronic products, computers and peripherals, audio and video components, and telephone equipment. The Facility also stores and processes general industrial and household hazardous waste, including: fluorescent light bulbs, ballasts, paints, stains, solvents, pesticides, herbicides, automotive products, cleaning products, aerosols and pool care chemicals. Santa Cruz collects and discharges storm water from the Facility through at least one (1) discharge point into Lombardi Creek, which flows into Monterey Bay. Lombardi Creek and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for the Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and

the prevention of nuisance. The discharge of waste shall not cause violation of these objectives.” *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (“MCLs”) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for Mercury - 0.002 mg/L; lead – 0.015 mg/L; Chromium – 0.1 mg/L; and, Copper – 1.3 mg/L.

The EPA has also issued a recommended water quality criterion for Aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. See <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); Chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); Copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and Lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.<sup>1</sup> Discharges of pollutants into a surface water body may be deemed a “contribution” to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus.*

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<sup>1</sup> See [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/category5\\_report.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml).



*Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Santa Cruz: Total Suspended Solids – 100 mg/L; and Iron – 1.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm and Total Organic Carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Ammonia – 19 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Arsenic – 0.16854 mg/L, Cadmium – 0.0159 mg/L, Cyanide – 0.0636 mg/L, Lead – 0.0816 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

## **II. Santa Cruz’s Violations of the General Permit.**

Based on its review of available public documents, CSPA is informed and believes that Santa Cruz is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

### **A. Santa Cruz Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).**

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the

General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Santa Cruz has discharged and continues to discharge storm water unacceptable levels of Total Suspended Solids, Iron, and Specific Conductance in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Santa Cruz's Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/12	Discharge Point 1	TSS	2510 mg/L	100 mg/L
4/19/12	Discharge Point 1	TSS	130 mg/L	100 mg/L
11/16/13	Discharge Point 1	TSS	1360 mg/L	100 mg/L
4/4/13	Discharge Point 1	TSS	924 mg/L	100 mg/L
3/29/14	Discharge Point 1	TSS	3080 mg/L	100 mg/L
4/25/14	Discharge Point 1	TSS	968 mg/L	100 mg/L



**2. Discharge of Storm Water Containing Iron (Fe) at Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	Fe	3.6 mg/L	1 mg/L
10/25/10	Discharge Point 1	Fe	2.1 mg/L	1 mg/L
2/16/11	Discharge Point 1	Fe	2.4 mg/L	1 mg/L
4/10/12	Discharge Point 1	Fe	72 mg/L	1 mg/L
4/19/12	Discharge Point 1	Fe	14 mg/L	1 mg/L
11/16/12	Discharge Point 1	Fe	60 mg/L	1 mg/L
4/4/13	Discharge Point 1	Fe	32 mg/L	1 mg/L
3/29/14	Discharge Point 1	Fe	83 mg/L	1 mg/L
4/25/14	Discharge Point 1	Fe	28 mg/L	1 mg/L

**3. Discharge of Storm Water With Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	SC	657 $\mu$ mhos/cm	200 $\mu$ mhos/cm
10/25/10	Discharge Point 1	SC	620 $\mu$ mhos/cm	200 $\mu$ mhos/cm
2/16/11	Discharge Point 1	SC	636 $\mu$ mhos/cm	200 $\mu$ mhos/cm
4/10/12	Discharge Point 1	SC	364 $\mu$ mhos/cm	200 $\mu$ mhos/cm

4/19/12	Discharge Point 1	SC	664 $\mu$ mhos/cm	200 $\mu$ mhos/cm
11/16/12	Discharge Point 1	SC	376 $\mu$ mhos/cm	200 $\mu$ mhos/cm
4/4/13	Discharge Point 1	SC	395 $\mu$ mhos/cm	200 $\mu$ mhos/cm
3/19/14	Discharge Point 1	SC	212 $\mu$ mhos/cm	200 $\mu$ mhos/cm
4/25/14	Discharge Point 1	SC	364 $\mu$ mhos/cm	200 $\mu$ mhos/cm

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of Santa Cruz's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicate that Santa Cruz has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Iron, and Specific Conductance in violation of Effluent Limitation B(3) of the General Permit. Santa Cruz was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Santa Cruz is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples may also constitute violations of Receiving Water Limitation C(2) of the General Permit, with respect to the discharge of parameters for which Santa Cruz has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits. The above samples also establish violations of Receiving Water Limitation C(1) of the General Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A (2) because the discharges cause or threaten to cause pollution, contamination or nuisance.

CSPA is informed and believes that Santa Cruz has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least December 12, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since December 12, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Santa Cruz has discharged storm water containing impermissible levels of Total Suspended Solids, Iron, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.



These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Santa Cruz is subject to penalties for violations of the General Permit and the Act since December 12, 2009.

**B. Santa Cruz Has Failed to Implement an Adequate Monitoring & Reporting Program.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Program by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled."

Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the General Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that Santa Cruz has failed to develop and implement an adequate Monitoring & Reporting Program. As an initial matter, based on its review of publicly available documents, CSPA is informed and believes that Santa Cruz has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during at least three of the past five Wet Seasons. Second, based on their review of publicly available documents, CSPA is informed and believes that Santa Cruz has failed to employ adequate testing methods and detection methods in violation of the General Permit for the past five wet seasons.

Further, Santa Cruz has failed to analyze storm water samples for all required constituents. As a facility enrolled under SIC Code 4953 Santa Cruz must also analyze samples for Ammonia, Magnesium, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, and Silver. See General Permit, Section B(5)(c)(iii)

and Table D, Section N. It has failed to do so on every occasion that it sampled since December 12, 2009. Finally, based on its review of publicly available documents, CSPA is informed and believes that Santa Cruz has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.75 mg/L ; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, Santa Cruz is subject to penalties for violations of the General Permit and the Act since December 12, 2009. These violations are set forth in greater detail below.

**1. Santa Cruz Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Three of The Last Five Wet Seasons.**

Based on its review of publicly available documents, CSPA is informed and believes that Santa Cruz has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during three of the past five Wet Seasons, as required by the General Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

Santa Cruz reported in four of the past five Wet Seasons (i.e., 2010-2011; 2011-2012; 2012-2013; 2013-2014 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, Santa Cruz reported in its 2012-2013 Annual Report that it sampled the first qualifying storm event of the Wet Season, but Santa Cruz's first sample is from November 16, 2012. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2012-2013 Wet Season occurred as early as October 22, 2012, when 0.18" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. Santa Cruz's Failure to Employ Adequate Testing Methods in Violation of the General Permit Since December 12, 2009.**

Santa Cruz is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. The Regional Board has determined the appropriate laboratory test methods to employ when analyzing storm water samples for the presence and concentration of various pollutants, as well as the appropriate detection limits for those testing methods.



However, in every single Annual Report filed by Santa Cruz in the past five years the test methods employed by the laboratory utilized to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with the Regional Board requirements. For example, the testing method Santa Cruz was required to apply for Iron was EPA 200.8 with a detection limit of 0.0005 mg/L. However, in the 2010-2011 Annual Report filed by Santa Cruz the laboratory utilized test method SM 3111-B. Further, the testing method Santa Cruz was required to apply for TSS was SM 2540-D. However, in the 2011-2012 annual report filed by Santa Cruz the laboratory utilized test method SM 2540-C. These are just a few of many examples of Santa Cruz's failure to adequately test the presence and concentration of pollutants at their storm water discharge points. Moreover, Santa Cruz failed to report what detection limits were being used to analyze the concentration of the pollutants present in the storm water discharged from the Facility, for every single annual report in the past five years.

Santa Cruz is in violation of the General Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit, Section B.2.a. ("Monitoring Program Objectives").

CSPA is informed and believes that publicly available documents demonstrate Santa Cruz's consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the General Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Santa Cruz is subject to penalties for these violations of the General Permit and the Act since December 12, 2009.

### **3. Santa Cruz's Failure to Analyze Storm Water Samples for All Required Constituents.**

Santa Cruz has failed to analyze storm water samples for all required constituents. Specifically, it has failed to ever analyze samples for Ammonia, Magnesium, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, and Silver, as required for facilities enrolled under SIC Codes 4953. *See* General Permit, Section B(5)(c)(iii) and Table D, Section N. It has failed to do so on every occasion that it sampled since December 12, 2009. In addition, CSPA is informed and believes that Santa Cruz has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.75 mg/L; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the General Permit and Clean Water Act. Accordingly, Santa Cruz is subject to penalties for these violations of the General Permit and the Act since December 12, 2009.

**C. Santa Cruz Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that Santa Cruz has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Iron, Specific Conductance, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, Santa Cruz must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Santa Cruz must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Santa Cruz has failed to adequately implement such measures.

Santa Cruz was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Santa Cruz has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. Santa Cruz is subject to penalties for violations of the General Permit and the Act occurring since December 12, 2009.

**D. Santa Cruz Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT



(Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that Santa Cruz has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Santa Cruz has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Santa Cruz has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Santa Cruz is subject to penalties for violations of the General Permit and the Act occurring since December 12, 2009.

**E. Santa Cruz Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Santa Cruz is discharging elevated levels of Total Suspended Solids, Iron, Specific Conductance, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Santa Cruz was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Santa Cruz was aware of high levels of these pollutants long before December 12, 2009. Santa Cruz has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since December 12, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Santa Cruz is subject to penalties for violations of the General Permit and the Act occurring since December 12, 2009.

**F. Santa Cruz Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigations indicate that Santa Cruz has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, Santa Cruz reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, Santa Cruz failed to sample from qualifying storm events in three out of last five Wet Seasons in violation of the permit. For example in the 2010-2011 Annual



Report Santa Cruz reported that it sampled from a storm event on February 16, 2011. However based on publicly available rainfall data CSPA is informed and believes that it the storm that occurred at the Facility on February 16, 2011 was not a qualifying storm event because 0.23 inches of rain fell on the Facility on February 14, 2011. Thus, the February 14th storm event rendered any storm occurring for three days afterwards non-qualifying under the General Permit.

These are but a few examples of how Santa Cruz has failed to file completely true and accurate reports. As indicated above, Santa Cruz has failed to comply with the Permit and the Act consistently for the past five years; therefore, Santa Cruz has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Santa Cruz submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. Santa Cruz's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Santa Cruz is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since December 12, 2009.

#### **IV. Persons Responsible for the Violations.**

CSPA puts Craig Pearson, Johnathan Seifert, Chris Schneider and the City of Santa Cruz on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Craig Pearson, Johnathan Seifert, Chris Schneider and the City of Santa Cruz on formal notice that it intends to include those persons in this action.

#### **V. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

#### **VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

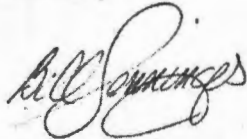
Andrew L. Packard  
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100 Petaluma Boulevard North, Suite 301  
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**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Craig Pearson, Johnathan Seifert, Chris Schneider and the City of Santa Cruz to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Craig Pearson, Johnathan Seifert, Chris Schneider and the City of Santa Cruz and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", is written over a faint horizontal line.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance



**SERVICE LIST**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
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Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
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Thomas Howard, Executive Director  
State Water Resources Control Board  
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Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**ATTACHMENT A**  
**Notice of Intent to File Suit, City of Santa Cruz**  
**Significant Rain Events,\* December 12, 2009 – December 12, 2014**

December 12, 2009	November 23, 2010	October 6, 2011	March 7, 2013
December 13, 2009	November 27, 2010	November 4, 2011	March 8, 2013
December 26, 2009	December 8, 2010	November 5, 2011	March 30, 2013
December 27, 2009	December 9, 2010	November 6, 2011	April 1, 2013
January 9, 2010	December 14, 2010	November 11, 2011	April 4, 2013
January 10, 2010	December 17, 2010	November 12, 2011	April 7, 2013
January 11, 2010	December 18, 2010	November 19, 2011	April 8, 2013
January 12, 2010	December 19, 2010	November 20, 2011	September 21, 2013
January 13, 2010	December 25, 2010	November 24, 2011	October 29, 2013
January 18, 2010	December 26, 2010	December 12, 2011	December 12, 2013
January 19, 2010	December 27, 2010	December 15, 2011	November 20, 2013
January 20, 2010	December 28, 2010	January 20, 2012	December 6, 2013
January 21, 2010	December 29, 2010	February 13, 2012	December 7, 2013
January 22, 2010	December 30, 2010	February 15, 2012	February 2, 2014
January 23, 2010	December 31, 2010	February 29, 2012	February 6, 2014
January 26, 2010	January 1, 2011	March 1, 2012	February 7, 2014
January 30, 2010	January 2, 2011	March 14, 2012	February 8, 2014
February 4, 2010	January 3, 2011	March 15, 2012	February 9, 2014
February 6, 2010	January 4, 2011	March 16, 2012	February 10, 2014
February 9, 2010	January 5, 2011	March 17, 2012	February 16, 2014
February 12, 2010	January 6, 2011	March 18, 2012	February 26, 2014
February 21, 2010	January 7, 2011	March 24, 2012	March 1, 2014
February 23, 2010	January 8, 2011	March 25, 2012	March 4, 2014
February 24, 2010	January 10, 2011	March 27, 2012	March 5, 2014
February 26, 2010	January 11, 2011	March 28, 2012	March 6, 2014
February 27, 2010	January 29, 2011	March 31, 2012	March 25, 2014
March 2, 2010	January 30, 2011	April 1, 2012	March 29, 2014
March 3, 2010	February 14, 2011	April 10, 2012	March 30, 2014
March 10, 2010	February 16, 2011	April 11, 2012	March 31, 2014
March 12, 2010	February 17, 2011	April 12, 2012	April 1, 2014
March 31, 2010	February 18, 2011	April 13, 2012	April 2, 2014
April 2, 2010	February 19, 2011	April 26, 2012	April 4, 2014
April 4, 2010	February 24, 2011	October 24, 2012	April 25, 2014
April 5, 2010	February 25, 2011	November 16, 2012	September 18, 2014
April 11, 2010	May 2, 2011	November 17, 2012	September 25, 2014
April 12, 2010	May 6, 2011	November 18, 2012	October 25, 2014
April 20, 2010	May 13, 2011	November 21, 2012	November 1, 2014
April 27, 2010	May 14, 2011	November 28, 2012	November 13, 2014
April 28, 2010	May 15, 2011	November 30, 2012	November 22, 2014
May 10, 2010	May 18, 2011	December 1, 2012	November 30, 2014
May 25, 2010	May 19, 2011	December 2, 2012	December 2, 2014
May 27, 2010	May 21, 2011	December 5, 2012	December 3, 2014
October 17, 2010	May 22, 2011	December 12, 2012	December 4, 2014
October 22, 2010	May 23, 2011	December 17, 2012	December 5, 2014
October 23, 2010	May 24, 2011	December 22, 2012	December 6, 2014
October 24, 2010	May 26, 2011	December 23, 2012	December 11, 2014
October 29, 2010	May 27, 2011	December 24, 2012	
October 30, 2010	May 28, 2011	December 25, 2012	
November 7, 2010	April 7, 2011	December 26, 2012	
November 19, 2010	April 8, 2011	December 29, 2012	
November 20, 2010	April 9, 2011	January 5, 2013	
November 21, 2010	October 3, 2011	January 6, 2013	
	October 4, 2011	March 5, 2013	
	October 5, 2011	March 6, 2013	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.